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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

19	In re	Case No. 3:14-cv-01200-RS
20	PLANT INSULATION COMPANY, a California corporation,	Bk. Case No. 3:09-BK-31347 TEC
21	Debtor.	Chapter 11
22	ONEBEACON INSURANCE CO., <i>et al.</i> ,	STIPULATED JOINT MOTION AND PROPOSED ORDER FOR EXTENSION OF TIME FOR APPELLANTS TO APPEAL FROM ORDER AFFIRMING CONFIRMATION OF AMENDED AND RESTATED SECOND AMENDED PLAN OF REORGANIZATION OF PLANT INSULATION COMPANY, AS MODIFIED
23	Appellants,	
24	v.	
25	PLANT INSULATION CO., <i>et al.</i> ,	
26	Appellees.	(Fed.R.App.P. 4(a)(5), Local Rules 6-2, 7-12)

1 **I. INTRODUCTION**

2 This stipulated motion¹ is brought jointly by the Plan Proponents² and the appellant
 3 insurers pursuant to Fed.R.App.P. 4(a)(5) to extend the date for the filing of any appeal
 4 from this Court's order affirming the Bankruptcy Court's Confirmation Order, which was
 5 entered on August 18, 2014 (the "Affirmation Order"). Because the parties have settled
 6 their disputes pending the expiration of a reconsideration period for any party to object to
 7 the settlements, they expect that by extending the appeal period, there will be no need for
 8 an appeal to be filed. Filing an appeal only to then seek its dismissal would cause
 9 unnecessary work for the judicial system and expense for the parties that can be avoided
 10 by an extension.

11 **II. FACTUAL STATEMENT³**

12 The Plan Proponents have now settled with the appellant insurers that had sought
 13 review of the Bankruptcy Court's Confirmation Order in this Court. This Court denied the
 14 appeal and entered the Affirmation Order on August 18, 2014. (See Docket No. 77). Any
 15 appeal from that Order is due on or before September 17, 2014, pursuant to Fed.R.App.P.
 16 4(a) (applicable pursuant to Fed.R.App.P. 6(b)).

17 Under the Plan of Reorganization that was the subject of the Affirmation Order, the
 18 Bankruptcy Court had jurisdiction up until September 2, 2014 in which to designate
 19 additional insurers as Settling Asbestos Insurers under the Plan. By two motions filed on
 20

21 ¹ This request is brought as a motion based on the language of Fed.R.App.P. 4(a)(5) that
 22 call for a motion for extension of time. It is in all other respects a stipulated request
 23 pursuant to Local Rule 6-2. The insurers have authorized the Plan Proponents to file this
 24 motion and to state that they join in it.

25 ² The Plan Proponents are Bayside Insulation & Construction, Inc., a California
 26 corporation, the Official Committee of Unsecured Creditors of Plant Insulation Company,
 27 and the Honorable Charles B. Renfrew (Ret.), appointed by the Bankruptcy Court under
 28 Bankruptcy Code Section 524(g)(4)(B)(i) as the legal representative on behalf of persons
 holding potential asbestos injury demands against Plant.

29 ³ The facts set forth herein are supported by the accompanying Declaration of Steven B.
 30 Sacks.

1 August 25 and 27, the Plan Proponents sought approval of settlements with the remaining
 2 objecting insurers, OneBeacon Insurance Company, OneBeacon America Insurance
 3 Company, American Employers' Insurance Company, Transport Insurance Company as
 4 successor in interest to Transport Indemnity Company, American Home Assurance
 5 Corporation, Insurance Company of the State of Pennsylvania, Granite State Insurance
 6 Company, and United States Fidelity & Guaranty Company, along with their affiliates.
 7 The Bankruptcy Court entered orders shortening time for hearing the motions to August
 8 29, 2014. No party objected to the relief sought in the motions and following the hearing,
 9 the Bankruptcy Court entered Settlement Approval Orders approving the settlements. (*See*
 10 Exhibits A and B to Sacks Declaration). Because the settlements were approved on
 11 motions heard on shortened time, the Bankruptcy Court provided any potential objectors
 12 with a 21-day period in which to seek reconsideration of the approval orders. That period
 13 ends on September 19, 2014.

14 The settlements with these insurers provide for them to be able to preserve their
 15 rights to appeal from the Affirmation Order until the later of the Settlement Effective Date,
 16 which is on September 19 unless reconsiderations is sought, or the entry of an order of the
 17 Bankruptcy Court denying reconsideration. (*See* Exhibits C and D to Sacks Declaration).
 18 Any notice of appeal from the Affirmation Order is due on September 17, 2014. In order
 19 to avoid the need for filing a notice of appeal before it is determined if any party is seeking
 20 reconsideration, the parties have agreed to seek an extension of time in which to do so
 21 from this Court.

22 **III. DISCUSSION**

23 Under Fed.R.App.P. 6(b), appeals from this Court acting in its appellate capacity
 24 are governed by the normal rules governing time to appeal contained in Rule 4, with
 25 certain exceptions not applicable here. The time for filing an appeal is normally 30 days,
 26 but Fed.R.App.P. 4(a)(5)(A)(ii) allows this Court to extend that time either before or after
 27 its expiration based on a showing of good cause. In this case, the extension can be for up
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1 to 30 days after the normal date for filing, or to and including October 17, 2014.
2 Fed.R.App.P. 4(a)(5)(C).

3 Here, all parties agree there is good cause to extend the time to file an appeal.
4 Under the settlement agreements, an appeal would only be filed as a protective measure in
5 the unlikely event that a party in interest sought reconsideration, and would only be
6 pursued in the even more unlikely event that the Bankruptcy Court granted reconsideration
7 and withdrew approval for one or both settlements. The easiest way to preserve appellate
8 rights in this instance is by merely extending the time in which to file the notice of appeal
9 until it is determined if at least the first eventuality of a motion for reconsideration comes
10 to pass. By doing so, the parties need not incur fees for filing the appeal, the time and
11 expense of following the necessary steps to perfect the appeal once filed, nor the effort of
12 getting an appeal dismissed once it is filed. The court system will not have to process an
13 appeal that would most likely be dismissed.

IV. CONCLUSION

15 The Plan Proponents and the Appellant insurers respectfully request that this Court
16 enter the proposed order extending the time for Appellants to file an appeal from the
17 Affirmation Order from September 17, 2014 to October 17, 2014.

18 | Dated: September 10, 2014

CAPLIN & DRYSDALE, CHARTERED

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By _____

STEVEN B. SACKS

Attorneys for Official Committee of Unsecured
Creditors of Plant Insulation Company

1 Dated: September 10, 2014

2 FERGUS, A LAW OFFICE

3

4 By */s/ Gary S. Fergus*
GARY S. FERGUS

5

6 Attorney for the Hon. Charles B. Renfrew (Ret.),
Futures Representative

7

8 Dated: September 10, 2014

9 SCHNADER HARRISON SEGAL & LEWIS LLP

10

11 By */s/ George H. Kalikman*
GEORGE H. KALIKMAN

12

13 Attorneys for Bayside Insulation & Construction, Inc.

14 SO STIPULATED.

15 DENTONS US LLP

16 By */s/ Robert B. Millner*

17 Robert B. Millner

18 Attorneys for OneBeacon Insurance Company

19 And for purposes of this stipulation only, on
20 behalf of the following parties in interest and
21 their counsel: American Home Assurance
22 Company, Granite State Insurance Company,
Insurance Company of the State of Pennsylvania,
Transport Indemnity Company and United States
Fidelity and Guaranty Company⁴

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⁴ Steven Sacks hereby attests that he has on file the holographic signature corresponding to
the Appellants' signature indicated by a conformed signature (/S/) within this e-filed
document.

ORDER

Good cause appearing, based on the foregoing it is hereby ordered that the date for 2014 Appellants to file a notice of appeal from this Court's Order entered August 18, 2019 is extended from September 17, 2014 to and including October 17, 2014.

Dated: September 11, 2014

Richard Seeger
UNITED STATES DISTRICT JUDGE